



# RIGHT OF WAY ACQUISITION PROCESS LPA LAND ACQUISITION

FHWA, MoDOT & Local Public Agencies  
Transportation Project Partners

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# TRANSPORTATION PROJECT PARTNERS

- ✖ The Local Public Agency (LPA) Policy, produced by the Missouri Department of Transportation is intended to be used as a guide for cities and counties that sponsor projects utilizing federal transportation funds provided under the current transportation bill, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act (SAFETEA-LU)

# **SAFETEA-LU**

## **SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT.**

SAFETEA-LU provides funding under the current transportation act with five local programs. They are:

- ✖ 1. Highway Bridge Program – BRO and BRM
- ✖ 2. Surface Transportation Program – STP Urban
- ✖ 3. Surface Transportation Program – STP Enhancement
- ✖ 4. Congestion Mitigation and Air Quality – CMAQ
- ✖ 5. Safe Routes To Schools – SRTS



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- ✘ Any of these programs may result in the need to acquire real property or real property interests as a part of the project.
  - ✘ If Federal Aid Funds are to be utilized in any portion of the project all requirements of the LPA Land Acquisition Manual must be followed whether funds are used in the right of way acquisition process or not.
  - ✘ Non compliance with any of the regulations or requirements as set out in the LPA Land Acquisition Manual potentially could jeopardize the receipt of federal funding for the entire project, therefore it is important to make sure you are in compliance.

## Federal Regulations

- ✗ United States Constitution Amendment 5
- ✗ US Code
- ✗ Code of Federal Regulations

## State Regulations

- ✗ Missouri Constitution, Sections 26-28
- ✗ Missouri Revised Statutes
- ✗ Code of State Regulations

## Local Regulations

City and County Ordinances,

## Misc Regulations

Drainage District Regs,  
Township Regs.

# REGULATIONS AND REGULATORY AGENCIES

- ✗ Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 USC 2000 d,e) as well as applicable title of the Americans with Disabilities Act (ADA)

Title VI - Prevents discrimination by gov. agencies that receive federal funds...

Title VII - Prohibits discrimination by covered employers...

[http://en.wikipedia.org/wiki/Civil\\_Rights\\_Act\\_of\\_1964](http://en.wikipedia.org/wiki/Civil_Rights_Act_of_1964)

- ✗ Internal Revenue Service (IRS)

Payments made for real estate must be reported to IRS – 1099 forms and instructions

- ✗ Federal Highway Administration - <http://www.fhwa.dot.gov>

- ✗ Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - <http://uscode.house.gov/download/pls/42C61.txt>

- ✗ MoDOT Engineering Policy Guide –

1. LPA: Category 136

[http://epg.modot.org/index.php?title=Category:136\\_Local\\_Public\\_Agency\\_%28LPA%29\\_Policy](http://epg.modot.org/index.php?title=Category:136_Local_Public_Agency_%28LPA%29_Policy)

2. LPA Land Acquisition: Category 236

[http://epg.modot.org/index.php?title=236.18\\_Local\\_Public\\_Agency\\_Land\\_Acquisition](http://epg.modot.org/index.php?title=236.18_Local_Public_Agency_Land_Acquisition)

- ✗ I did not make copies of the Land Acquisition Section as changes occur often therefore you should consult the EPG for the most current guidelines available.



# LOCAL PUBLIC AGENCY LAND ACQUISITION

The LPA section of the EPG is 236.18

Section 1 – General

Section 2 – Funding Procedures

Section 3 – State Monitoring

Section 4 – Retention and Access to Records

Section 5 – Plans & Title Information

Section 6 – Acquisition

Section 7 – Property Valuation

Section 8 – Acquisition through Eminent Domain

Section 9 – Relocation Assistance

Section 10 – Right of Way Clearance Certification

Section 11 – Right of Way Services through Contract

Section 12 – Property Management

# FUNDING PROCEDURES

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- ✖ How do you plan to pay for Right of Way?
- ✖ Is your city rich and has money pouring out the windows. . . ?
- ✖ Your City has saved and recycled aluminum cans and glass for 20 years. . . ?
- ✖ Your City's residents are civic minded and they will donate everything you need. . . ?
- ✖ You City will pay 20% of the Right of Way cost after federal reimbursement. . . ?



# REQUEST TO PROCEED WITH ACQUISITION 2 OPTIONS (SIMILARTIES)

## ✖ EPG Section 236.18.2.3

Option A – Request for Notice to Proceed with RW thru MoDOT Local Roads “NOTICE TO PROCEED” (Form 2A)

- ✖ No Federal Funds in R/W
- ✖ Agency to Acquire – “Do It Yourself”

Option B – Request Acquisition Authority thru MoDOT Local Roads and FHWA “A-DATE ACQUISITION AUTHORITY” (Form 2B)

- ✖ Federal R/W Funds are Obligated for Right of Way
- ✖ Agency to Acquire with Others - “Do it With Others”

# REQUEST TO PROCEED WITH ACQUISITION

## 2 OPTIONS (THE DIFFERENCES)

Option A – Notice to Proceed

- ✗ R/W Cost Estimate is highly recommended.

Option B – A-Date/Acquisition Authority

- ✗ R/W Cost Estimate is Required

Statement is required – “Federal Funds Requested for R/W Acquisition” Breakdown of the Estimated Costs is mandatory.

Included on the next page of the packet is a copy of a cost estimate worksheet. This is provided to assist you with preparing and becoming familiar with cost estimates.

# PREREQUISITES FOR EITHER OPTION

- ✘ Date - Preliminary Design Approved
- ✘ Date – Right of Way Plans Approved
- ✘ Copy of CE – Environmental Clearance
- ✘ Copy of 106 – Cultural Resource Clearance
- ✘ Date – Design Public Hearing – if applicable



# RIGHT OF WAY ACQUISITION COSTS PRIOR TO AUTHORITY TO PROCEED

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- ✘ Not eligible for reimbursement
- ✘ Exceptions
  - Title Work
  - Description Writing
  - R/W Plan Development
  - Preliminary R/W Cost Estimates
- ✘ Do Not include any other right of way costs in Design Engineering Services Contract

# FEDERAL FUNDS R/W ACQUISITION

- ✘ OBLIGATED with A-DATE REQUEST
  - “Request for R/W Acquisition Authority”
- ✘ Items submitted with A-DATE REQUEST
  - + R/W COST ESTIMATE – qualified and properly estimated for future reimbursement
  - + R/W Services Contract(s) – signed copies for Appraisers, Reviewers, Negotiators, or All-In-One.
  - + Copy of R/W Supplemental Agreement
  - + Copy of Approved R/W Plans, 1 set 11”x17”

# ELIGIBLE R/W ACQUISITION COSTS AFTER A- DATE OR FHWA AUTHORITY TO PROCEED

- ✖ Real Property Acquisition Payments
- ✖ Costs Incidental to the Acquisition
- ✖ Recording and Notary Public Fees
- ✖ Pro Rata Real Estate Taxes
- ✖ Permanent and Temporary Easements
- ✖ Damages to Remainder of real property
- ✖ Mediation and Condemnation Costs



# MORE REIMBURSABLE R/W COSTS...

- ✖ Tenant owned improvements
- ✖ Uneconomic remnants
- ✖ Construction items in exchange for donations or mitigation of damages
- ✖ Relocation Assistance payments, moving payments, incidental expenses;
  - + Actual, Reasonable, Necessary.

# MONITORING OF RIGHT OF WAY ACQUISITION PROCEDURES DURING PROJECT

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- ✖ Section 236.18.3
- ✖ MoDOT Local Roads/Planning
- ✖ MoDOT Right of Way Division
- ✖ Guidance and Advisory Assistance available

*Early consultation can eliminate problems and facilitate delivery of Federal Funds. Call Sam Grimes R/W Manager 660-385-8680*

# TITLE WORK/ABSTRACTING

- ✘ Depending on the project it may or may not be necessary to obtain title commitments for title insurance policies.
- ✘ If the project is for temporary easements the last deed of record is likely all you will need.
- ✘ For the acquisition of permanent rights it may be necessary to obtain a title commitment to ensure that you are acquiring all interests to the property.
- ✘ A “risk assessment” may assist you in making that decision.



# RIGHT OF WAY PLAN APPROVAL

Right of way plan requirements are set out in the EPG at Section 236.18.5. “Plans and Title Information”

The plans must show the following information:

- ✗ existing right of way
- ✗ beginning and ending project limits by station
- ✗ proposed right of way and easements
- ✗ dimensions of proposed acquisition
- ✗ names of property owners
- ✗ land survey lines (including quarter section and quarter-quarter section lines) and property lines, including at least one witnessed corner with the centerline tied to it
- ✗ parcel identification numbers
- ✗ areas of new right of way, permanent easements and temporary easements
- ✗ remainder of land holdings on each side of road
- ✗ all improvements or structures to be acquired or damaged by the project
- ✗ grading and slope limits
- ✗ entrances (location, type and surface material)
- ✗ Federal-aid project number

If the project is not for road purposes, plan requirements may be different, as imposed by agencies other than the Federal Highway Administration. Check with MoDOT’s district right of way manager for the plan requirements of those jobs.

# NEGOTIATION PROCEDURES

The following is a general guide as to the number and content of negotiation contacts. Normally three contacts are needed to assure the owner's understanding and confidence.

During the first contact the negotiator is to:

- ✘ Provide brochure, [Pathways for Progress](#)
- ✘ Review title information
- ✘ Explain the right of way plans and provide plan sheet, portion of plan sheet, or plat illustrating the acquisition and the remainder
- ✘ Explain the acquisition procedures and provide blank [Escrow Agreement](#), (Form 7-4.2 (CCO RW 8)) if applicable
- ✘ Explain Proration of Taxes and provide [Pro Rata Real Estate Tax Claim](#), (Form 7-2.22C)
- ✘ Provide the written Offer Letter
- ✘ Provide the appraisal or waiver valuation
- ✘ Provide conveyance documents
- ✘ Provide or agree to obtain answers to the owner's questions
- ✘ When applicable and appropriate, explain the IRS requirements on 1099S and provide [Request for Taxpayer Identification Number and Certification and Request for Allocation of Gross Proceeds](#), (Form 7-7.3), or [IRS Form W-9](#).

# PREPARING LEGAL DOCUMENTS

- ✘ All documents should indicate the county, route and Federal Aid Project Number
- ✘ Deeds should indicate the names of all owners as indicated either in the last deed of record, or in the title commitment or legal opinion
- ✘ Work closely with your agency attorney for document preparation. There are requirements for signatures, acknowledgements, etc.
- ✘ Recitals can be used for deceased owners, one and the same person. It takes the place of an affidavit.
- ✘ Resolutions should be used with corporations or any entity that has a board of directors.
- ✘ If possible legal descriptions should contain area quantities as indicated on the right of way plans
- ✘ If you are uncertain about any of these please give me a call. I will be glad to provide guidance and language as may be necessary.
- ✘ When working with corporations I suggest that you contact the Missouri Secretary of States office to learn who has the authority to sign for the corporations. <https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp>



# REVIEW OF THE R/W ACQUISITION PARCEL FILES AT COMPLETION OF THE PROJECT

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All acquisition files must be complete;

- ✖ Recorded documents, deeds, legals, and exhibits.
- ✖ Negotiator's Report log
- ✖ Title and proof of ownership
- ✖ Offer letters, request for donations/waiver.
- ✖ Appraisals or waiver valuations
- ✖ Agreements, Administrative Settlement Justification.
- ✖ Copies of all Correspondence of all Parties involved.

Submitted to MoDOT for final review, monitoring and approval

MoDOT Central Office must give concurrence of approval before  
R/W Clearance Certification.

# PROJECT/ACQUISITION MONITOR CHECKLIST

## Appendix Item/Form 1A

This checklist is used to verify all process requirements are met. If the question can't be answered from the information and documentation submitted, it will likely cause a delay in receiving clearance certification.

# REVIEW OF R/W ACQUISITION PARCEL FILES AT COMPLETION OF PROJECT

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- ✘ Submitted to MoDOT district r/w for final monitoring, review and approval of acquisition procedures.
- ✘ MoDOT Central Office must give Concurrence of Approval before R/W Clearance Certification is sent to the Office of Transportation Planning.



# R/W CLEARANCE CERTIFICATION STATEMENT

- + Entire Clearance Certification  
The “Usual”
- + Partial Clearance Certification  
The “Less Often Used”
- + Conditional Clearance Certification  
The “Very Rare”
- ✗ Local Agency must include appropriate statements to certify the status of RW.
- ✗ Authority to Advertise is NOT GRANTED Until the R/W Clearance is APPROVED

# DEFINITIONS

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- ✘ Public agency – Any county, municipality, state or local political subdivision, or governmental agency.
- ✘ Eminent Domain – As contained in the Missouri Constitution and most recently in HB 1944.
- ✘ Coercion - The Uniform Act forbids an acquiring agency from taking any coercive action in order to compel an owner to agree on a price for his property. All negotiations shall be conducted in such a manner as to avoid coercing an owner to reach agreement. Condemnation shall not be used as a threat.

# DEFINITIONS (con't)

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- ✘ Uneconomic Remnant – Any area of property in which the original property owner is left with an interest after the partial acquisition of their property, and in which the agency has determined that the remaining area has little or no value or utility to the owner.



# LINKS

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1. LPA Land Acquisition Guidelines  
[http://epg.modot.org/index.php?title=Category:236\\_Right\\_of\\_Way](http://epg.modot.org/index.php?title=Category:236_Right_of_Way)
2. CARES Website <http://www.cares.missouri.edu/>
3. MO Corp. Info. <https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp>
4. Code of Federal Regulations <http://www.gpoaccess.gov/cfr/>
5. MO Code of Regulations <http://www.sos.mo.gov/adrules/csr/csr.asp>
6. FHWA <http://www.fhwa.dot.gov/>
7. Show Me More Real Estate <http://shomemorerealestate.com/>